IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.06.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P. (PD) No.531 of 2004

Sanghi Transport Limited
rep. by its General Manager
having its registered office in
M.I. Road
Jaipur 302 001. .. Petitioner

Vs.

Oriental Insurance Company
Divisional office at
J.N. Road
Tiruvallur
rep. by the Manager .. Respondent

Revision Petition filed against the order dated 19.1.2004, passed in O.S.No.195/2002, on the file of Addl.District Judge, Fast Track Court No.V, Chengalpattu at Tiruvallur.

For Petitioner : Mr.P.Ragunathan for M/s.T.S.Gopalan.

For Respondent : Mr.M.Rajasekar

ORDER:

This Revision Petition has been filed against the order dated 19.1.2004, passed in O.S.No.195/2002, on the file of Addl.District Judge, Fast Track Court No.V, Chengalpattu at Tiruvallur.

2.The defendant in O.S.No.195/2002 on the file of the Addl. District Judge (Fast Track Court No.V), Chengalpattu is the revision petitioner before this court.

3.O.S.No.195/2002 was filed by the Oriental Insurance Company against the revision petitioner herein for a judgment and a decree to pay a sum of Rs.10,47,597/- being the amount paid to the consignee and Rs.20,398/- towards the survey fees with future interest at the rate of 9% till recovery.

4.The case of the plaintiff is that Hindustan Motors Co., took out a policy of insurance for the period in respect of all its vehicles manufactured till they reached the various destination of its dealers. The defendant/revision petitioner is in the transport business and the Hindustan Motors entrusted with the defendant in Adigathur a consignment four new lancer cars for being transported to western Agencies in Jaipur. The said consignment was transported through the defendant's container which met with an accident on 5.10.1999 near Dhule, Maharashtra. The consignee asked for delivery and the cars were handed over to consignee on 20.10.99 in a damaged condition. As the vehicles were badly damaged, the consignee sent them back to Hindustan Motors. The consignee sent a demand to the plaintiff for a sum of Rs.23,86,478/- being the damage value of 4 cars. The plaintiff paid a sum of Rs.15,780/- as survey fees and on the basis of the estimate of the surveyor, the plaintiff paid the consignee a sum of Rs.10,75,538.79 on 24.5.2000. On the same day, the said consignee executed an assignment and special power of attorney in favour of the plaintiff. After sending a notice on 3.11.2000 to the defendant, the plaintiff filed the above suit for the aforesaid relief.

5.The defendant entered appearance and filed a written statement wherein it was specifically stated that only the courts in Jaipur alone will have jurisdiction to try the suit as per the lorry receipt dated 30.9.1999 and therefore the plaint is liable to be returned. The defendant/revision petitioner made a demand to take up the issue of territorial jurisdiction as a preliminary issue and the trial court took up the issue as a preliminary issue and by order dated 19.1.2004, the trial court held that the court has jurisdiction to try the suit. Aggrieved by the order of the trial court dated 19.1.2004, the above Civil Revision Petition has been filed by the defendant under Article 227 of the Constitution of India.

6.Heard the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

7.The learned counsel for the petitioner submitted that the consignment was sent to M/s.Western Indian States Motors, M.I. Road, Jaipur and the lorry receipt issued by the defendant has clearly stated that the consignment was booked subject to the condition that all claims/suits shall be filed in the court of jurisdiction of Jaipur only. Therefore according to the learned counsel, the jurisdiction of all other courts is ousted by agreement between the parties and therefore the trial court has committed an error in holding that it has got jurisdiction to try the suit.

8.Per contra, the learned counsel for the respondent/plaintiff submitted that as a part of the cause of action namely entrustment of the consignment of cars and the issuance of letter of subrogation arose within the jurisdiction of the trial court, the trial court has got jurisdiction to try the suit.

9.I have considered the rival submissions with regard to the facts and citations.

10.It is well settled that if there are more than one forums where a suit can be filed it is open to the parties by agreement to select a particular forum and exclude the other forums in regard to claims which one party may have against the other under the contract. At the same time it is not competent to the party to the agreement to confer a court with jurisdiction which does not otherwise possess. The intention of the parties can be culled out from the use of the expressions "only", "alone", "exclusive" and the like with reference to a particular court but the intention to exclude the court's jurisdiction should be reflected in clear, unambiguous, explicit and specific terms.

11.Now let me consider whether the lorry receipt issued by the defendant on 30.9.1999 ousted the jurisdiction of the trial court.

12.In the plaint filed in O.S.No.195/2002 it is stated that the trial court has territorial jurisdiction to

entertain the suit as the cars were entrusted with the defendant at Adigathur within the jurisdiction of the court and the insurance was effected in Trivellore only. It is further stated that any other term in the printed lorry receipt by the defendant cannot take away the jurisdiction of the trial court.

13.In the lorry receipt dated 30.9.99 it is specifically stated that all claims/suits shall be instituted in the court of jurisdiction of Jaipur only. Relying on this clause, the revision petitioner contended that only courts in Jaipur will have jurisdiction exclusively.

14.Normally a litigation can be initiated in any one of the places where the cause of action arose. In the case on hand, the consignment was entrusted, insurance policy was effected and the letter of subrogation was given in Trivellore District within the jurisdiction of the trial court. The accident took place in State of Maharashtra and the consignee was in Jaipur. Therefore courts in all these places will have jurisdiction to try the suit if parties by consent confer jurisdiction on any one of the places exclusively excluding the courts in other places. If the lorry receipt dated 30.9.99 is considered in proper perspective I am of the considered view that the courts in Jaipur only will have jurisdiction to try the suit.

15.In 2004(4) SCC 677 (New Moga Transport Co. v. United India Insurance Co.Ltd.), a similar question came up for consideration before the Hon'ble Supreme Court. In that case, the second plaintiff purchased certain articles which were booked in 29 bales. The materials were booked with a transport company for transportation to Barnala. The consignment reached Barnala, but on account of fire which took place, there was destruction of whole of the materials. The second plaintiff lodged a claim and the 1st plaintiff settled their claim and on the basis of Letter of Subrogation issued by the 2nd plaintiff the 1st plaintiff filed a suit against the transport company in Barnala. The transport company took a specific plea that the court at Barnala had no jurisdiction to deal with the suit as in the consignment note it was stated that the court in Udaipur alone had jurisdiction to deal with the matter. The trial court did not accept the plea of the transport company. But the first appellate court set aside the judgment of the trial court. The High Court restored the judgment of the trial court by holding that the plaintiffs were entitled to the relief and the court at Barnala had jurisdiction. The Supreme Court in the above decision set aside the order of the trial court, restored the order of first appellate court and directed the trial court to return the plaint to enable the plaintiff to present it before the proper court at Udaipur.

16.The relevant portion of the order of the Supreme Court reads as under:

8. Section 20 CPC reads as follows:

"20. Other suits to be instituted where defendants reside or cause of action arises:-Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution: or

(c) the cause of action, wholly or in part, arises.

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

9.Normally, under clauses (a) to (c) the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause. The clear intendment of the Explanation, however, is that where the corporation has a subordinate office in the place where the cause of action arises it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises.

10.On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts: (i) before the word "or" appearing between the words "office in India" and the words "in respect of", and (ii) the other thereafter. The Explanation applies to a defendant which is a corporation, which term would include even a company. The first part of the Explanation applies only to such corporation which has its sole or principal office at a particular place. In that event, the court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression "at such place" appearing in the Explanation and the word "or" which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone has the jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office".

11.Section 20, before the amendment of CPC in 1976, had two Explanations being Explanations I and II. By the Amendment Act, Explanation I was omitted and Explanation II was renumbered as the present Explanation. Explanation which was omitted reads as follows:

"Explanation I.- Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence."

12.This Explanation dealt with the case of place of residence of the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place, that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II, on the other hand, which is the present Explanation, was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places, the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place.

13. The above position was noted in PATEL ROADWAYS LTD. v. PRASAD TRADING CO. (1991 (4)

SCC 270).

14.By a long series of decisions it has been held that where two courts or more have jurisdiction under CPC to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in any one of such courts is not contrary to public policy and in no way contravenes Section 28 of the Indian Contract Act, 1872. Therefore, if on the facts of a given case more than one court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two courts. But by an agreement parties cannot confer jurisdiction on a court which otherwise does not have jurisdiction to deal with a matter (See
HAKAM SINGH v. GAMMON (INDIA) LTD. (1971(1) SCC 286 : AIR 1971 SC 740) and SHRIRAM CITY UNION FINANCE CORPN. LTD. v. RAMA MISHRA (2002 (9) SCC 613: AIR 2002 SC 2402).

15. In the aforesaid factual background, the facts of the case at hand have to be looked into.

16. Had it only been indicated in the consignment note that the court at head office city had jurisdiction then in the absence of a precise indication of the place what would have been the consequence, we are not presently concerned, more particularly, when the consignment note itself had indicated that the court at Udaipur alone had jurisdiction.

17.As was observed by this Court in SHRIRAM CASE (2002 (9) SCC, 613 : AIR 2002 (SC) 2402) referring to HAKAM SINGH CASE (1971 (1) SCC 286 : AIR 1971 SC 740) an agreement affecting jurisdiction of courts is not invalid. It is open to the parties to choose any one of the two competent courts to decide the disputes. Once the parties bind themselves as such it is not open for them to choose a different jurisdiction.

18.Above being the factual and legal position, the inevitable conclusion is that the High court was not justified in upsetting the order of the first appellate court. It is not a case where the chosen court did not have jurisdiction. The only question, therefore, related to exclusion of the other courts."

17.The above decision of the Supreme Court will squarely apply to the facts of this case and if that be so, the only conclusion that could be arrived at is that the courts in Jaipur only will have jurisdiction to try the suit.

18.Hence I am inclined to interfere with the order of the trial court and accordingly the same is set aside. The trial court is directed to return the plaint to the respondent/plaintiff with appropriate endorsement under its seal and the respondent/plaintiff is directed to present the same within a period of 10 weeks from the date of endorsement of return by the trial court before the proper court in Jaipur.

19.With the above direction this Civil Revision Petition is allowed. No costs. C.M.P. No.5373/2004 is closed.

sks

[PRV/10584]